

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND) MDL NO. 13-02419-FDS
COMPOUNDING)
PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, MA 02210

February 6, 2014
1:30 p.m.

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1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. You can
3 all be seated. Court is now in session in the matter of
4 In re: New England Compounding Pharmacy, Incorporated
5 Products Liability litigation. This is
6 Case 13-md-02419.

7 Counsel, please note your appearances for
8 the record.

9 MS. PARKER: Good afternoon, your Honor,
01:33PM 10 Kristen Johnson Parker for the plaintiffs' steering
11 committee.

12 MR. SOBOL: Good afternoon, your Honor,
13 Tom Sobol for the PSC.

14 MR. CHALOS: Good afternoon, your Honor,
15 Mark Chalos for the PSC.

16 MR. FENNELL: Good afternoon, your Honor,
17 Patrick Fennell for the PSC.

18 MS. DOUGHERTY: Good afternoon, your Honor,
19 Kim Dougherty from Janet, Jenner & Suggs on behalf of
01:33PM 20 the plaintiffs' steering committee.

21 MR. ZAMORA: Hello, Judge, Mark Zamora for
22 the PSC.

23 MR. GASTEL: Ben Gastel for the PSC.

24 MR. STRANCH: Gerard Stranch for the PSC.

25 MR. NOLAN: Your Honor, George Nolan from

1 Nashville. I represent several plaintiffs.

2 THE COURT: All right.

3 THE CLERK: In the back.

4 MR. SEXTON: Your Honor, Scott Sexton for
5 the Roanoke plaintiffs.

6 MS. TAYLOR: Kiersten Taylor.

7 MR. COREN: Good afternoon, your Honor,
8 Michael Coren, Cohen, Placitella & Roth, P.C., co-chair,
9 official creditors' committee.

01:33PM 10 MR. ELLIS: Rick Ellis for various
11 plaintiffs.

12 MR. MOLTON: Good afternoon, Judge,
13 David Molton, Brown Rudnick, counsel for the creditors'
14 committee.

15 MR. GOTTFRIED: Mike Gottfried for
16 Paul Moore, the trustee.

17 MR. STERNKLAR: Good afternoon, your Honor,
18 Jeffrey Sternklar for the trustee, New England
19 Compounding Pharmacy.

01:34PM 20 MR. KLARFELD: Good afternoon, your Honor,
21 Joshua Klarfeld on behalf of GDC.

22 MR. SALTZMAN: Paul Saltzman for Ameridose,
23 your Honor.

24 MR. GAYNOR: Robert Gaynor on behalf of the
25 so-called individuals.

1 MR. RABINOVITZ: Dan Rabinovitz on behalf of
2 Medical Sales Management.

3 MR. FERN: Good afternoon, Judge,
4 specially-retained counsel for the trustee.

5 THE COURT: Good afternoon, all. This is a
6 status conference in this case. We have about 40 people
7 listening on the telephone as well. I want to begin by
8 making the following announcement.

9 On Wednesday, two lawyers from my or
01:34PM 10 actually more than two, but lawyers from my former law
11 firm, Goodwin Procter, entered an appearance on behalf
12 of UniFirst. The two lead lawyers are not just former
13 colleagues of mine but actually good personal friends,
14 and I'm, therefore, going to recuse myself from this
15 matter. I don't really see a way around that.

16 As I understand it, the case is going to be
17 reassigned internally, not going back to the MDL panel,
18 and my expectation and understanding is that it's going
19 to be reassigned to Judge Rya Zobel, which is a big
01:35PM 20 trade-up. You all should be happy with that, but,
21 obviously, this involves some considerable inconvenience
22 and possibility of delay, although those of you who have
23 dealt with Judge Zobel know that she is in addition to
24 being an intelligent and fair and thoughtful person is
25 also very efficient.

1 What I propose to do going forward today is
2 I guess I'll group things into three categories. I do
3 want to hear various status reports because I want to
4 know where things stand as part of transitioning to a
5 new Judge.

6 Second, we have some substantive matters.
7 We have, for example, the trustee's renewed and
8 supplemental motion to transfer, which I don't think I
9 can take up under the circumstances. I think we have
01:36PM 10 some dispositive motions brought by St. Thomas, Premier
11 and others, which I don't think I can take up, and I
12 also will leave the common benefit account motion to one
13 side as well.

14 I don't see any reason why I can't as part
15 of the transition issue some relatively minor orders to
16 keep things on track. There's a motion concerning a
17 briefing schedule, the clarifying motion on central
18 enforcement of subpoenas and some other odds and ends
19 that seems to me are relatively administrative or
01:37PM 20 administerial. They can certainly be undone by another
21 Judge if for some reason I have it wrong, but they're
22 not substantive.

23 I recognize that a number of you came from
24 other parts of the country during a time when travel is
25 difficult and appreciate what must be a feeling of

1 frustration, particularly if you've prepared to argue
2 motions or to deal with issues that I'm putting to one
3 side, but this is, as I see it, a conflict or an
4 appearance of conflict under 28 U.S.C., 455(a) that is
5 not really waivable.

6 Again, the lawyers in question are not
7 simply former colleagues or people I know or people I've
8 dealt with but good personal friends, and I think under
9 the circumstances, again, I have no real option but to
10 bow out.

01:38PM

11 So that's an overview, and I think what I'd
12 like to do is to go down the agenda and at least touch
13 on each item to make sure that this is being orderly. I
14 don't want any period of time, as I said, to go by
15 without addressing what I consider to be minor or
16 ministerial issues, and unless someone has an objection,
17 I'm going to try to clean up some odds and ends on my
18 way out, so to speak.

19 I guess let me start, does anyone have any
20 questions or requests for clarification on what I've
21 discussed so far, Ms. Parker?

01:38PM

22 MS. PARKER: No, your Honor.

23 THE COURT: Okay. Anything from the
24 creditors' committee, trustee?

25 MR. MOLTON: No, your Honor.

1 MR. GOTTFRIED: No, your Honor.

2 THE COURT: Defendants?

3 MR. RABINOVITZ: No, your Honor.

4 MR. SOBOL: If I may, your Honor?

5 THE COURT: Yes.

6 MR. SOBOL: I think you can sort of sense
7 the wind going out of the sail in a lot of people here,
8 so you should appreciate that, at least. I think that's
9 apparent.

01:39PM 10 THE COURT: I understand. As I'm sure all
11 of you have, on multiple occasions in my career as a
12 lawyer, I got all prepared for something, flew to some
13 location to argue my motion or appeal and had it delayed
14 or worse, so I certainly understand the feeling, and,
15 again, I do this with considerable reluctance, but I
16 don't view it as being particularly a close call, so
17 that's what it is.

18 I guess I should add by way of parentheses,
19 it's no secret that every Judge, including me, has cases
01:40PM 20 that they fervently would like to get rid of and are
21 thrilled when the case disappears, and this is not such
22 a case, and one of the things that has made it
23 pleasurable is what I consider to be high quality
24 lawyering and cooperative lawyering. Certainly you all
25 have made things as easy as they could be from my

1 perspective, and I very much appreciate that.

2 All right. Let's get going and accomplish
3 whatever can be accomplished here. Ms. Parker, short
4 form complaints.

5 MS. PARKER: Mr. Gastel will be addressing
6 that.

7 THE COURT: All right. Yes, sir.

8 MR. GASTEL: Thank you, your Honor.

9 THE COURT: I'm sorry, Mr. Gastel.

01:40PM 10 MR. GASTEL: Mr. Gastel, Branstetter,
11 Stranch & Jennings in Nashville on behalf of the PSC. I
12 believe on January 28th, we filed what best could be
13 described as a census of the short form complaints that
14 had been filed on or before December 20th.

15 Just to give a quick summary of that
16 document, your Honor, 330 unique cases were on file in
17 the MDL at that time constituting about 400 individual
18 plaintiffs excluding those with derivative claims like
19 loss of consortium claims. Of those 330 unique cases,
01:41PM 20 253 filed short form complaints.

21 UniFirst is named on every single one of
22 those, Liberty is named in 11, and approximately 149
23 cases has short form complaints that named a
24 clinic-related defendant, which are obviously those
25 clinics that injected or provided NECC products to

1 patients.

2 THE COURT: Does that mean there are 77
3 cases in which the short form complaint, and, therefore,
4 the master complaint had not been adopted, that is, the
5 complaint is whatever the complaint was as filed by
6 plaintiff's counsel?

7 MR. GASTEL: That is correct, sir, but I
8 believe that the number is 80. There are 330 unique
9 cases with 253 short form complaints filed. Being a
10 lawyer and being bad at math, I believe that that's 78.

01:42PM

11 THE COURT: I came up with 77, whatever,
12 call it 77 and a half.

13 [Laughter]

14 MR. GASTEL: Like I said, being a lawyer, I
15 am bad at math. I believe you're right, your Honor, I
16 apologize for that, and then of those 253 short form
17 complaints, 149 in addition to naming UniFirst and/or
18 Liberty also name a clinic-related defendant.

19 In that filing, there is a chart of who
20 those clinics are. I don't think anybody in the
21 courtroom will be surprised that the clinics with the
22 most cases against them at the moment are the Tennessee
23 clinics.

01:42PM

24 After that, the next clinics is the two
25 New Jersey clinics, Premier, being one, and the

1 South Jersey Health or Hospital entity being the other.
2 Premier has ten cases where they've been specifically
3 named, and South Jersey has nine.

4 Now, there is one oddity in that one of
5 those cases names both of those entities, and so that
6 case has been essentially counted twice in that chart.

7 THE COURT: Okay.

8 MR. GASTEL: Unless you have any other
9 questions about how I sort of put that census together,
01:43PM 10 and I'm very happy to answer those questions, that's
11 sort of the summary of where we are.

12 THE COURT: No, it's a very useful exercise,
13 and I very much appreciate it.

14 MR. GASTEL: Thank you.

15 THE COURT: All right. Anything else on
16 that topic?

17 (No response)

18 THE COURT: All right. Status of mediation
19 efforts. Ms. Parker.

01:43PM 20 MS. PARKER: Thank you, your Honor. We
21 currently have the following entities that are
22 participating in the Court-ordered mediation program,
23 Liberty, Victory, ARL, Orlando, West Orange, as well as
24 one unnamed entity. Those mediations are proceeding,
25 documents are being exchanged, and dates have been

1 scheduled for most, if not all, of those mediations.

2 In addition, Inspira -- I need to figure out
3 actually whether it's Inspira or Inspira because I think
4 we all say it both ways, I'll say Inspira -- is
5 participating in a private mediation.

6 THE COURT: All right.

7 MR. COREN: Your Honor, on the Inspira is
8 the way I pronounce it, we have a mediation scheduled
9 with Eric Green, so there's overlap with the Court's
01:44PM 10 mediation program to gain the economies there. The
11 explanation for the dual on Inspira-Premier is doctors
12 at Premier have mission privileges at Inspira, which is
13 the former South Jersey Medical, and the information is
14 being exchanged in earnest, and we think both sides are
15 making good progress to get to the table with Mr. Green.
16 Thank you, your Honor.

17 THE COURT: Okay. Thank you.

18 MR. MOLTON: Your Honor, David Molton for
19 the creditor's committee. I just want to let your Honor
01:45PM 20 know that in reference to what Ms. Parker said and
21 Mr. Coren, Professor Green and Carmen Reese from
22 Professor Green's firm are both providing terrific
23 stewardship of the mediation programs that they're
24 running, and just to add to what Ms. Parker said, we do
25 have dates certain in the next 60 to 90 days when we're

1 actually going to be in active mediation seeking
2 resolution, so I just wanted your Honor to know in
3 connection with your mediation order and the appointment
4 of Professor Green's firm that they're doing a terrific
5 job.

6 THE COURT: Great. Anything else on
7 mediation?

8 (No response)

9 THE COURT: Status of proposed settlement.

01:46PM 10 Who's going to take the lead? Mr. Sobol.

11 MR. SOBOL: Good afternoon, your Honor.
12 Slowly, "glacially" used to be a word that would be apt,
13 but I think the glacials are moving faster than the
14 settlement of this case.

15 THE COURT: I think the glacials are moving
16 backwards actually.

17 MR. SOBOL: Oh, that's right, backwards. It
18 depends where you're standing actually. I hope that
19 we're able to make more progress next month. There's
01:46PM 20 nothing really to say, otherwise it would not be
21 accurate to say we're moving along, just it's moving
22 slowly. There are perhaps some good reasons for it,
23 there are probably maybe not good reasons, but,
24 whatever, the parties will do what they can over the
25 next month.

1 THE COURT: All right. I had a deadline
2 which may be a placeholder. Is it March 10th? Is that
3 right?

4 MR. SOBOL: Yes.

5 THE COURT: In other words, if nothing
6 happens to extend that deadline, I suppose that is the
7 deadline, isn't it, March 10th by which you'd have to
8 answer the master complaint, if nothing else, they would
9 have to answer the master complaint?

01:47PM 10 MR. SOBOL: Yes.

11 THE COURT: Mr. Gottfried.

12 MR. GOTTFRIED: Your Honor, I think from our
13 perspective, I think we're being more optimistic than
14 the PSC. We think good progress is being made. Drafts
15 have been exchanged. Comments were returned last
16 evening. We're certainly hopeful that what would have
17 been done the next status conference in front of your
18 Honor, that we would be where we want to be and that
19 we're certainly working hard toward that end.

01:47PM 20 I think in that regard with respect to the
21 master complaints, you know, our thought would be today
22 to ask for you to kick that down the road just a little
23 bit past whenever the next status conference would be.
24 I don't know what Judge Zobel's calendar will be.

25 THE COURT: Actually, I don't know as well.

1 I think we had conferences in place up through May. I'm
2 going to leave all those dates in place and let her deal
3 with it as she wishes.

4 MR. GOTTFRIED: So our thought, that should
5 be extended, and certainly progress is being made. As
6 you can appreciate, I'll let Mr. Molton, who's been
7 actively involved in this, add to this as well. There's
8 a lot of parties involved, there's a lot of lawyers
9 involved, this is very complex, there's a lot of
10 interrelationships between the agreements and what we
11 were perhaps overly optimistic at the last status
12 conference about the timing, we're still optimistic.

01:48PM

13 MR. MOLTON: If I may, your Honor, to drool
14 down on some of the substance, Mr. Gottfried is right,
15 these are very complex lien agreements. We not only
16 have an insider settlement agreement, we've got two
17 insurance agreements, one of which contains a number of
18 policies, actually three insurance agreements, all of
19 which have been reduced to writing.

01:48PM

20 Those drafts were circulated a number of
21 weeks ago. They are in the iterative process.
22 Mr. Gottfried is correct that these are very complex
23 agreements. We also have circulated, the trustee and
24 the committee have circulated, the insiders to the
25 proposed 9019 motion and order for the bankruptcy court

1 in connection with the insider agreement, so it is -- we
2 are also, you know, frustrated that it's taken a little
3 bit longer than we thought, but I don't want your Honor
4 to think that things aren't moving, they are moving.

5 We are working on agreements, and I'll join
6 Mr. Gottfried in saying that it was our intention to be
7 able to announce at the next status conference that
8 those agreements have been inked and are ready to be
9 teed in front of the bankruptcy court.

01:49PM

10 And I do also want to say, your Honor, in
11 light of what's been said earlier, that it's no small
12 matter that your Honor's stewardship in connection with
13 Judge Boroff, who led us to a point where we are able to
14 report to you the slow but moving progress of
15 significant settlement agreements for the benefit of the
16 tort claimants in this matter.

17 THE COURT: Thank you for the kind words.
18 Walk me through, suppose you do have an ink settlement,
19 it goes to the Bankruptcy Judge first, what's your
20 expectation of how it would be approved or implemented,
21 I guess?

01:50PM

22 MR. MOLTON: Our expectation, your Honor, in
23 accordance with the actual draft iterations of the
24 settlement agreement is that they call for a Bankruptcy
25 Court 9019 approval, Rule 9019 approval, which is the

1 approval process for settlement agreements reached by
2 the trustee with parties which must be approved by the
3 Bankruptcy Judge.

4 I think, your Honor, in one of the pleadings
5 that was in front of your Honor that was going to be
6 argued today, I think it was related to the PSC's motion
7 for common benefit allocation. We kind of went through
8 what the process is going to be, but once the 9019
9 motion is approved by the Bankruptcy Judge, at that
01:51PM 10 point, it's at least in our contemplation, again, these
11 are iterative drafts of the agreements, that funding
12 will happen into escrow, into an escrow supervised and
13 under the control of the trustee and the bankruptcy
14 court.

15 What will then happen, your Honor, is that
16 those monies will remain in escrow because each of the
17 settlement agreements will contain as conditions for
18 their effectuation, basically a confirmation of a
19 bankruptcy plan that will contain the sort of releases
01:51PM 20 and injunctions that your Honor has heard about since we
21 first appeared in front of you, so it's our hope that we
22 will be building on these settlement agreements with
23 other settlement agreements with other third-party pain
24 clinics and medical care providers so that at the
25 appropriate time that it would be our hope, again, and I

01:52PM

1 don't want this to be used to come back at me because
2 this is a very complicated case with a lot of moving
3 pieces, but it would be our hope at some point in the
4 second half of 2014, Judge Saylor, that those settlement
5 agreements, the ones that had been reached and had been
6 agreed to and had been approved by the Bankruptcy Judge,
7 will then be offered up for final approval in front of
8 the Bankruptcy Court in a Chapter 11 plan, which upon
9 the entry of a confirmation order and certain other
10 conditions would then result in the allocation of those
11 proceeds to various places, including, as I think we
12 stated in the committee's pleading, a significant
13 portion of those proceeds to a tort trust for
14 distribution to tort claimants in this MDL and otherwise
15 in accordance with a claim's facility that will be
16 agreed to by the plaintiffs themselves, and that's how
17 we look at the next half year, nine months, Judge.

01:53PM

18 THE COURT: All right. Good. Anything else
19 on that topic? All right. Number 4, master complaint.
20 Mr. Gottfried, you said you wanted to kick that deadline
21 past our next status conference. When is the next
22 status conference?

23 MR. SOBOL: The next status conference is
24 March 13th on your calendar, your Honor. We're not sure
25 about Judge Zobel's docket.

1 THE COURT: Why don't I kick that March 10th
2 date, the filing of the master complaint to --

3 MR. SOBOL: The 31st.

4 THE COURT: Why don't we make it March 31st.
5 Will that work, Mr. Gottfried? That's a placeholder,
6 obviously.

7 MR. GOTTFRIED: Yes, understood.

8 THE COURT: All right. I will enter an
9 order to that effect. As far as the extension of time
01:53PM 10 for UniFirst, I think I granted that, notwithstanding
11 the appearance of conflict.

12 Mr. Sobol, do you want to be heard on that?

13 MR. SOBOL: No, your Honor.

14 THE COURT: I'm doing favors for me friends
15 here.

16 [Laughter]

17 THE COURT: All right. Number 5, the PSC's
18 motion to partially lift the discovery stay is, as it
19 has been in limbo, and hopefully it will never get out
01:54PM 20 of limbo. Am I right about that, assuming the
21 settlement works?

22 MR. SOBOL: Well, no, quite the opposite,
23 your Honor. That's a feeling of advocacy on my part.
24 Before I go ahead, I do think that while technically the
25 issues involving this motion don't directly involve

1 UniFirst, it's probably a pretty fundamental decision
2 for the case as to when formal discovery starts
3 regarding NECC.

4 THE COURT: Oh, yes.

5 MR. SOBOL: Before I talk, I'm not trying to
6 do anything other than responding.

7 THE COURT: In any event, that's going to be
8 put on hold for the time being.

9 MR. SOBOL: That needs to be put on hold,
01:54PM 10 but just to be clear with you, and perhaps if Judge
11 Zobel is reading this before our next hearing, there are
12 two different issues with respect to NECC. Of course,
13 one issue is whether there's liability for it, and,
14 obviously, if there's a settlement, you don't need
15 discovery with respect to that.

16 Second, however, and, more importantly, is
17 that there is still an enormous amount of formal
18 discovery that needs to be taken with respect to NECC
19 and the affiliated defendants regarding the liability or
01:55PM 20 not of many other parties, and, frankly, the one way to
21 discharge the obligations on behalf of this MDL would be
22 to create a set of discovery that's relevant to all
23 those other issues so at least the common discovery has
24 been concluded.

25 Having said that, whether and when to begin

1 that, I, under these circumstances, it won't be for you,
2 it will be for Judge Zobel, so I'll hold my powder in
3 terms of my arguments as to why I'd like to move forward
4 with that now and leave it for her.

5 THE COURT: Give me an update on the
6 informal, or whatever we want to call it, discovery to
7 date.

8 MR. SOBOL: Right. So on the informal
9 discovery, until fairly recently, I think our report has
01:56PM 10 always been very good, and that there's been informal
11 discovery, that Mr. Fern's office and the trustee's
12 office have worked with us on an ad hoc basis depending
13 upon the issue and the actual potential defendants or
14 the matter you're looking into trying to find
15 information and get information.

16 In addition, there are the mediations that
17 are underway regarding a handful of actual or potential
18 defendants. There's been informal efforts with respect
19 to those.

01:56PM 20 One of the hiccups we've had recently, and
21 I'm not going to try to make any more of it, but it is a
22 hiccup, and it's a frustration is that because it's an
23 informal process, there is this sort of, "Well, I want
24 this from you" and "You haven't given this to me," so
25 we've had some hiccups in the past several weeks in

1 terms of trying to get some information, and those
2 hiccups can either be expressed in pretty frustrating
3 ways, or we can sugarcoat it as much as we'd like and
4 make a good presentation to you.

5 One way or the other, the point is it's an
6 informal process, it's not a formal process, it is
7 moving forward, it has its issues, the lawyers continue
8 to try to work those out, that kind of thing.

9 But in discussing this with some of my
01:57PM 10 colleagues here, I criticized my own presentation of
11 that issue at the last status hearing as basically being
12 I think I overdid it in terms of recognizing how -- the
13 process works fine, but it has its shortcomings
14 regardless of what the lawyers are doing, meaning the
15 formal discovery process has to kick in at some point --

16 THE COURT: I certainly do think --

17 MR. SOBOL: -- as a practical matter.

18 THE COURT: -- from my viewpoint, there's no
19 realistic alternative, and I guess to, you know -- go
01:57PM 20 ahead.

21 MR. SOBOL: Just to give you one example, so
22 when we, the PSC, receive information in this informal
23 process from the trustee or Mr. Fern, Mr. Gottfried, our
24 rules of the game are we're not allowed to share it with
25 anybody else. We abide by that. Of course, that makes

1 frustrations then when people say we want this
2 information when they're making demands of us for it,
3 right, or the trustee is then working out arrangements
4 to give it to somebody.

5 Again, it's a source of difficulty of
6 actually trying to move things along when things are in
7 an informal way, not to cast aspersions on any persons'
8 good faith at all, which I'm not doing.

9 THE COURT: Well, just, again, perhaps to
01:58PM 10 state the obvious, from my perspective, first off, I
11 agree that this needs to be formalized, that I don't
12 think informal discovery is ever a substitute for formal
13 discovery. It has its virtues, not waiting long periods
14 of time before people can begin to process information,
15 but it has its shortcomings.

16 From my perspective, it's been intertwined
17 with this settlement issue. I didn't want a relatively
18 small company and a relatively small number of people to
19 be bombarded with discovery if there's questions about
01:59PM 20 who's going to pay for or who's going to store the
21 documents, all these kinds of things that I hope would
22 become if not resolved, at least teed up, once that
23 process was done, and, obviously, it's been hung up by
24 that, but to state the obvious, this episode, these
25 episodes happened, what, a year and a half ago now, and

1 discovery really needs to get underway as quickly as
2 possible.

3 Mr. Gottfried, do you want to add anything
4 to this?

5 MR. GOTTFRIED: I think, quite frankly, the
6 stay has been in place, has salutary effects, it's
7 allowed parties to get where we are. I think de facto
8 even perhaps it's going to be in place until the next
9 status conference with Judge Zobel, and that would give
01:59PM 10 the parties time to complete, hopefully, the settlement
11 agreements, and then I think we need to see where we are
12 and what's left and what makes sense, so I think the
13 process that you outlined, quite frankly, at the last
14 status conference, that that would start a meet and
15 confer process at that time when we see what the lay of
16 the land is, you know, made good sense, and so I think
17 the process at this stage has been salutary, I think we
18 cooperated fully in informal discovery in a reasonable
19 way consistent with, you know, our obligations, quite
02:00PM 20 frankly, to preserve the assets of the estate, and so
21 I'm comfortable with where we are and look forward to
22 discussing it with Judge Zobel at the next status
23 conference.

24 THE COURT: All right. I guess, you know,
25 it may not be on the front burner, but it shouldn't be

1 on the back burner anymore, maybe it's a big stove,
2 middle row of burners.

3 MR. FERN: Judge, if I may.

4 THE COURT: Yes, Mr. Fern.

5 MR. FERN: Thank you. You've gotten some
6 analysis from both Mr. Sobol and Mr. Gottfried in which
7 I don't disagree with anything that's been said. The
8 informal process though has been working. Other than
9 these hiccups, and those hiccups are not of anyone's
02:01PM 10 making except the deal that the PSC cut with the trustee
11 early on to take the information as quickly as possible
12 so they could dig into the documents on an informal
13 basis.

14 Now that's coming back to haunt, but that
15 also is being resolved because the other parties are
16 getting access to the documents that the trustee through
17 my office has provided to the PSC.

18 We continued to cooperate. This goes back
19 to April of 2013, when we had our first negotiations.
02:01PM 20 We continue to make productions. As we sit here, I
21 believe a production is being made to the PSC and the
22 OCC regarding additional documents from InSight down in
23 the Philadelphia Belt Jersey area.

24 There are, especially with these mediations,
25 or these anticipated mediations, we have moved those

1 things expeditiously to get the documents to the PSC for
2 their analysis prior to going to the mediation table.

3 We have made 13 productions, 5200 documents,
4 42,000 pages. There's a search being conducted as we
5 speak for Victory documents and Liberty documents where
6 mediation is scheduled. We anticipate those productions
7 would be made last week. The searches are being done by
8 my office often without negotiating or suggested search
9 terms from the other side.

02:02PM

10 We are doing our search terms that are as
11 all inclusive as they can be to get the relevant and
12 responsive documents to the PSC or the OCC as need be
13 for their mediation use and whatever due diligence they
14 may need as part of the agreement that's put in place
15 with the insiders, so I don't disagree with the Court's
16 analysis that we do need formal discovery, but I just
17 wanted to advise that things have been moving along.

02:03PM

18 The PSC is getting everything they've asked
19 for, so there's really nothing to hurdle, to stop this
20 process from moving forward.

21 THE COURT: All right. And that was my
22 understanding and expectation. I guess I'll leave it
23 there. At some point, like I say, it does need to be
24 regularized, access needs to be shared with everyone who
25 has a right to know and so on, but it may be still a

1 little early to do that.

2 I can remember when 42,000 pages was a big
3 case, by the way, that's how old I am. It seems like a
4 small number now compared to what I usually deal with.

5 Anything else on informal discovery? I
6 guess we're on item 6. Item Number 7, well, Ms. Parker.

7 MS. PARKER: I would expect that your Honor
8 would not want to hear argument on that issue today, but
9 I can give you a --

02:04PM 10 THE COURT: I guess I want to hear on this
11 point. Is this something that is properly referred to
12 the Magistrate Judge or should it remain with the
13 District Judge, whether with me or Judge Zobel?

14 MS. PARKER: We would have no objection to
15 it being referred to Magistrate Judge Boal.

16 THE COURT: Is anyone here from Baltimore
17 Pain Management that wants to be heard?

18 MS. MARZULLO: Your Honor,
19 Michelle Marzullo representing Baltimore Pain
02:04PM 20 Management.

21 THE COURT: Yes.

22 MS. MARZULLO: I have no objection to this
23 being referred to Judge Boal.

24 THE COURT: All right. I will do that. I
25 think it's Number 786 and 787, is that right, the PSC's

1 motions to compel?

2 MS. PARKER: That's correct, your Honor.

3 THE COURT: All right. That's referred to
4 Magistrate Judge Boal.

5 MS. DOUGHERTY: Your Honor, if we may, could
6 we ask just that we do this as expeditiously as
7 possible? The PSC has a lot of issues related to the
8 violation of the order that relate not only to Baltimore
9 Pain but also several other clinics and hospitals,
02:05PM 10 including some that are defendants in this litigation
11 that have failed to comply with the order that are
12 holding us up in the process from moving forward with
13 respect to motions to dismiss and also with respect to
14 whether or not they even have wasting policies and other
15 issues, so we were prepared to have this heard today,
16 your Honor, given the fact that it has nothing related
17 to UniFirst, and it's fully briefed, we're happy to have
18 you hear it, your Honor, if you're able to hear it
19 today, but if you'd like to refer it, we just ask that
02:05PM 20 it be something that gets referred very quickly and ask
21 to be heard as quickly as possible.

22 THE COURT: I think the better course is to
23 refer it. I'll ask Mr. Cicolini to give a heads-up to
24 Judge Boal's clerk, that it is fully briefed and the
25 parties expected to argue it today and there is an

1 expedition.

2 MS. DOUGHERTY: Thank you, your Honor.

3 MS. MARZULLO: Your Honor, this is
4 Michelle Marzullo.

5 THE COURT: Yes.

6 MS. MARZULLO: If I could just interject, as
7 this nonparty, who is part of this discussion, I was not
8 prepared to argue this today, and I do not believe
9 that --

02:06PM 10 THE COURT: You're in luck then because I'm
11 not going to ask you to do that.

12 MS. MARZULLO: Thank you. I disagree that
13 it's been fully briefed. I'm preparing to request leave
14 to file a sur-reply.

15 THE COURT: Okay.

16 MS. PARKER: While we're speaking of giving
17 a heads-up, your Honor --

18 THE COURT: Yes, Ms. Parker.

19 MS. PARKER: -- I want to give a heads-up to
02:06PM 20 the Court, as well as all counsel who are present, that
21 the PSC intends to file additional motions to compel in
22 very short order, in particular, one against Premier and
23 probably an omnibus motion to compel that addresses
24 particular issues and groups them in some sort of
25 logical way.

1 To the extent that your Honor may find it
2 appropriate to issue an order that refers all motions to
3 compel that are derived from Judge Boal's earlier order
4 on the issue, sort of in a one fell swoop, that may be
5 appropriate.

6 THE COURT: Again, I'm not going to do that.
7 I'll leave that to Judge Zobel. What you say makes
8 sense, it's just hard to think it through in advance,
9 and you'll wind up not referring something that ought to
10 be and referring something that ought not to be, so, in
11 any event, I take the comment, I'm going to leave it the
12 Baltimore Pain Management motion or the motions related
13 to that entity will be referred, and it sounds like
14 other motions are coming down the pike.

15 Anything else on Number 7 on subpoenas and
16 objections?

17 (No response)

18 THE COURT: All right. Number 8 I propose
19 to put on hold. I guess I should ask is it fully
20 briefed and ready to be argued?

21 MR. SOBOL: From the PSC's point of view,
22 yes, your Honor.

23 THE COURT: Has every interested party had
24 an opportunity to respond?

25 MR. COREN: Your Honor, speaking from the

1 point of view of the OCC, out of the lawyers who sit as
2 proxy, in view of the submission that we received about
3 an hour or two before this hearing, we would like to
4 submit a reply to that reply.

5 THE COURT: All right. How soon can you get
6 that on file?

7 MR. COREN: In one week, your Honor, we
8 believe.

9 THE COURT: I'll give you leave to file I
02:08PM 10 guess is it a sur-reply by February the 13th?

11 MR. COREN: Thank you, your Honor.

12 MR. GOTTFRIED: Your Honor, can I request
13 that the trustee get the same order? I want to have the
14 opportunity to confer with Mr. Coren about that.

15 THE COURT: Again, February 13th.

16 MR. SOBOL: Your Honor, in light of I think
17 it's fair to say that UniFirst and no defendant has any
18 interest in the Court's ruling one way or the other with
19 respect to this issue, including, obviously, than
02:09PM 20 UniFirst, and also since it has some history in your
21 overview of the case to date, I think it makes sense,
22 and I would perhaps ask that you at least hear the
23 parties on it, receive the submissions and make a
24 decision on the basis of what you hear today and the
25 submissions as to whether it's something you want to

1 make a decision on or refer to Judge Zobel.

2 THE COURT: I thought about that, and I
3 think what I would prefer to do is while it doesn't
4 directly affect UniFirst, or, arguably, any defendant,
5 it does have an effect on I guess the ultimate course
6 and outcome of the case, and I think it ought to be left
7 to the Judge who's going to put the final signature on
8 the final document to decide, but I think that I would
9 expect to weigh in on it as appropriate with Judge Zobel
02:10PM 10 in terms of, you know, to the extent she wants history
11 or my view of what's happened to date, I think that's
12 appropriate for me to do that, but I think the issue
13 itself is best left for her.

14 All right. Unless there's anything on 8 or
15 9, an order setting a briefing schedule, I think I can
16 rule on this. My only question was there was quite a
17 gap here. It takes us all the way out to May 7th for
18 the Tennessee defendants to file their replies, which
19 is, I guess, six weeks or so after March 28th. Does the
02:11PM 20 briefing schedule need to be that long?

21 MR. STRANCH: Your Honor, this is
22 Gerard Stranch on behalf of the PSC.

23 THE COURT: Yes.

24 MR. STRANCH: I'm going to start by saying
25 we're going to miss you, but we do need that time.

1 THE COURT: I feel a bond because we have a
2 roman numeral in common, Mr. Stranch.

3 MR. STRANCH: There's not very many of us,
4 your Honor.

5 THE COURT: We're a believer of minority.

6 [Laughter]

7 MR. STRANCH: Your Honor, the problem we've
8 got is there's a large amount of briefing. It's over 80
9 pages on just one of the motions alone. We've not seen
02:11PM 10 two of the other briefs yet, and so we expect this is
11 literally going to be 300 to 400 pages of briefing.
12 Before we start filing our responses to it, we're going
13 to need that period.

14 THE COURT: I'm feeling better already about
15 the recusal.

16 MR. STRANCH: We haven't even gotten to the
17 appendices or exhibits, your Honor, so it is going to be
18 a complex, long brief that's going to have to be
19 written, and so we built the time in so that we wouldn't
02:12PM 20 end up a week beforehand having to ask for extra time or
21 having to rush through.

22 I do take to heart the comments of
23 Mark Twain that, "If I had more time, I would have
24 written less," and so that we hope by having more time
25 on the front end, we can write a more compact, coherent

1 brief that addresses the main issues, but we think we're
2 going to need that time just because of the amount of
3 briefing that's done.

4 THE COURT: All right. Does anybody else
5 want to be heard on that issue?

6 (No response)

7 THE COURT: All right. I'm going to grant
8 the motion then and set the timetable that's set forth
9 in the document, which is Number 845, which, again, sets
10 a briefing schedule that takes us all the way out to
11 early May.

12 MS. PARKER: If I may, your Honor.

13 THE COURT: Yes, Ms. Parker.

14 MS. PARKER: If it has not already been
15 filed, I understand we'll be filing a similar
16 stipulation for a briefing schedule with Premier either
17 today or possibly tomorrow. It's a similar timetable,
18 not exactly the same, but just to alert you to the fact
19 that that is likely coming as well.

20 THE COURT: If you want my quick pass at it,
21 get it on file quickly. I don't know how long this
22 transition is going to take, but please don't delay.

23 MS. PARKER: We will do that. Thank you,
24 your Honor.

25 THE COURT: Dispositive motions I'm going to

1 hold in abeyance, obviously. That's Number 10.
2 Number 11, matters referred to Judge Boal, who is
3 prepared to give me an update on that?

4 MS. PARKER: I will address that, your
5 Honor. There was a meeting this morning before
6 Judge Boal to address the plaintiffs' fact sheet or
7 plaintiffs' profile form as well as the releases that
8 the parties had proposed accompany that fact sheet. The
9 hearing went very well. I think Judge Boal had some
02:14PM 10 very pointed questions about specific questions proposed
11 by either side.

12 One of the issues that arose is that the
13 plaintiffs had included in the submission to Judge Boal
14 an ESI protocol and a deposition protocol, and we had
15 done that in light of your Honor's comments at the
16 previous status conference that we should meet and
17 confer and we should submit those to the Court.

18 We did not, however, as I gather, formally
19 present those in the form of a motion, so we intend to
02:14PM 20 do that, again, in short order. Our suggestion would be
21 that those matters then be formally referred to
22 Magistrate Boal, that Magistrate Boal may be deciding
23 ESI protocol, deposition protocol and the plaintiff fact
24 sheet and releases at the same time.

25 THE COURT: All right. Remind me, is that

1 all defendants as opposed to just St. Thomas?

2 MS. PARKER: Yes, your Honor.

3 THE COURT: All right.

4 MS. PARKER: They are documents that were
5 primarily negotiated with St. Thomas, that all
6 defendants were invited to participate in the meet and
7 confers. I believe that the majority of the comments
8 and the submissions came from St. Thomas and other
9 Tennessee defendants, but the purpose of those
02:15PM 10 documents, in particular, the ESI protocol and the
11 deposition protocol are to set parameters that then
12 would apply to all defendants in the MDL moving forward.

13 THE COURT: All right. When would you
14 expect to file that motion?

15 MS. PARKER: It may have been done already,
16 your Honor.

17 THE COURT: Again, if it's something you
18 want me to act on, it needs to be on file quickly. All
19 right. Anything else on matters referred to Judge Boal?
02:15PM 20 All right. Number 12, bellwether scheduling process.
21 What's the status of that?

22 MR. CHALOS: Your Honor, I can address this
23 on behalf of the PSC. This is Mark Chalos. We have
24 been engaged in a process of developing a bellwether and
25 trial plan with an accompanying schedule and discovery

1 schedule.

2 We sent a proposed plan to the defendants
3 several weeks ago. We proposed a meet and confer
4 session for the following Monday. We sent it to them on
5 Friday, proposed to meet and confer session for the
6 Monday. They weren't able to make that work, so we
7 moved it to Wednesday. On Wednesday, they were not able
8 in a position to have any meaningful discussion about
9 it, so we said we'll plan to file it on Friday, the
10 31st.

02:16PM

11 We proposed a future meet and confer either
12 before the 31st or after we had put it on file with the
13 Court on the 31st, and we've heard nothing in writing or
14 verbally until yesterday when we saw a filing from one
15 group of the St. Thomas defendants, and then this
16 morning, there's another filing from the other group of
17 St. Thomas defendants wherein they have proposed some
18 schedules of their own that are counterproposals to
19 ours.

02:17PM

20 It looks like there's some areas of overlap,
21 it looks like there's some areas that I think we'll be
22 able to negotiate and agree on resolution for, and I
23 think there's some areas where we may need some court
24 intervention.

25 What I was planning to propose to your Honor

1 is doing some sort of expedited basis wherein the Court
2 would set a deadline for a week or so from now for the
3 parties to file a joint submission or competing
4 submissions or some blend of the two with a telephone
5 hearing at some point before the next scheduled status
6 conference.

02:17PM 7 We preferred not to let this slip another
8 five weeks, if possible. Of course, in light of your
9 Honor's news from today, I'm not sure if we can do that
10 today, but if we can, I certainly would like to set up
11 at least a schedule for dealing with this issue and
12 getting it before Judge Zobel, if possible, before the
13 next status conference.

14 THE COURT: All right. Specifically what do
15 you propose by way of schedule?

02:18PM 16 MR. CHALOS: What I was planning to propose
17 is next Friday is the deadline, which would give us the
18 deadlines for the parties to file either jointly or
19 separately a document that identifies the areas of
20 agreement and sets forth the areas of disagreement by
21 next Friday, which would give us about a week to
22 continue meeting and conferring.

23 Following that, I would suggest the
24 following Wednesday for any replies to the other side's
25 briefs with, you know, strict page limits, maybe a

1 five-page limit for the first briefs and a three-page
2 limit for the reply briefs or something like that, and
3 then set up a telephone hearing maybe a week after the
4 replies are due to give the Court ample time to review
5 all the filings.

6 THE COURT: Mr. Rehnquist.

7 MR. REHNQUIST: Your Honor, Jim Rehnquist
8 for UniFirst. We just got here, and we object to any
9 kind of an expedited briefing schedule, thus we have not
02:19PM 10 been part of any meet and confers, and we think this
11 matter is best left for Judge Zobel.

12 THE COURT: All right. I think under the
13 circumstances, I'll need to do that. I will, again,
14 attempt to let her know that the PSC at least thinks
15 that this is a matter that needs to be expedited and
16 leave it to her judgment to decide what she wants to do
17 in that regard.

18 All right. Does anyone want to be heard
19 from St. Thomas or anyone else who's been participating
02:19PM 20 in this process?

21 MS. GREER: Your Honor, this is Marcy Greer.

22 THE COURT: Yes, Ms. Greer.

23 MS. GREER: Obviously in light of the
24 current circumstances, we don't have to brief these
25 issues to you, but I do want to correct the record that

1 we have been exchanging written correspondence about
2 this, and the presentation made, it sounds as if we
3 weren't participating. That's not in fact the case.

4 We are concerned about expediting this and
5 setting it on a very short basis, which I'm glad the
6 Court is not going to do because obviously we've got a
7 lot of mental work to do to educate this new sitting
8 Judge about the interaction of all these different
9 things, so I just wanted to correct the record on that
10 point.

02:20PM

11 THE COURT: Okay. Anything else on that
12 topic?

13 (No response)

14 THE COURT: All right. Number 13, PSC
15 notice of instructions for accessing legal repository.

16 MS. PARKER: Yes, your Honor.

17 THE COURT: Ms. Parker.

18 MS. PARKER: The PSC filed a document
19 providing instructions on how parties in the MDL may
20 access the U.S. legal repository. To date, no one has
21 taken us up on our offer of access. One participant is
22 in mediation and claims that cost is an issue for them,
23 and that's something we're working through.

02:20PM

24 THE COURT: Is that Liberty?

25 MS. PARKER: Yes, your Honor.

1 MR. FERN: Judge, I will say on behalf of
2 the trustee, we were given access this week through the
3 FTP file transferred as work, and Ms. Maura tells me
4 last night that everything that is in the U.S. Legal
5 Repository but for one new delivery within the last 24
6 hours we have already been funded to, so the process is
7 working.

8 THE COURT: Okay.

9 MR. SOBOL: At our own expense, too, we took
02:21PM 10 care of the bill for them.

11 MR. FERN: We offered to pay our fair share,
12 Judge.

13 THE COURT: That's a dispute that I'm glad I
14 won't have to work through. All right. Unless there's
15 anything else on that, the motion to amend the order on
16 central enforcement of subpoenas, I've reviewed this.
17 It's not clear to me there's any opposition. Was one
18 filed? If so, I couldn't find it.

19 MS. PARKER: No, your Honor.

02:21PM 20 THE COURT: I'm going to go ahead and enter
21 that order. I may tweak it somewhat. I'll grant that
22 motion and enter it. It's really in the nature of a
23 clarifying motion as much as anything else. The
24 trustee's renewed and supplemental motion to transfer,
25 which is I think one of the big headline items, I'm

1 going to defer on. My understanding is that it is fully
2 briefed; is that right? Does anyone disagree?

3 MR. GOTTFRIED: We submitted our final paper
4 this morning actually, your Honor.

5 THE COURT: All right. So that will be
6 deferred, as will the renewed motion for mandatory or
7 permissive abstention. Item 17, what is this,
8 Ms. Parker?

9 MS. PARKER: This is 17A is just a
02:22PM 10 recognition that the Court has entered a third-amended
11 protective order since the last status conference.

12 THE COURT: Yes, there was an ambiguity or
13 inconsistencies I think that I corrected so that there's
14 now a new protective order.

15 MS. PARKER: 17B refers to the fact that the
16 PSC filed an amendment to the master complaint that
17 added some additional factual and legal allegations that
18 were specific to St. Thomas. That was an additional.
19 We drafted it as a subparagraph under the existing
02:23PM 20 conspiracy count. We anticipate that we may have, I
21 can't say will have, but may have similar amendments
22 that are specific to other clinics as we continue
23 forward in this litigation.

24 THE COURT: All right. Remind me, what, if
25 any, amendments to the complaint, I don't remember how

1 this is addressed. In other words, do you need to file
2 a motion? Can you do it on your own? What is the
3 protocol for this? I've forgotten.

4 MS. PARKER: Under Federal Rule 15.

5 THE COURT: Right.

6 MS. PARKER: I can't tell you which subpart,
7 which is embarrassing, but under Federal Rule 15, you
8 are permitted to amend the complaint within a certain
9 number of days receiving a motion to dismiss.

02:24PM

10 THE COURT: Right.

11 MS. PARKER: So this particular amendment
12 was done within that time period.

13 THE COURT: Okay. It's within rubric of
14 Rule 15. You talk about future amendments to the master
15 complaint, the master complaint is itself not a
16 complaint, it's something that people adopt by
17 reference, and so it's not clear to me whether any of my
18 existing orders addressed this, but presumably you could
19 amend it at any time, but then the question is do you
20 now need to file a new short form complaint adopting the
21 new master complaint? If that hasn't been thought
22 through, that ought to be. Ms. Dougherty.

02:24PM

23 MS. DOUGHERTY: Your Honor, we did think
24 about that in advance of the short form complaint.
25 Actually, in the first paragraph, it adopts all the

1 references in the master complaint and any amendments
2 thereto, so our effort at that point in time was to
3 encapsulate any further amendments so that the short
4 form complaint itself would not have to continuously be
5 amended every single time there's a change.

6 THE COURT: All right. What I'm going to do
7 is note the existence of the issue. If some defendants
8 as this process violates Rule 15 or somehow it tangles
9 up their Rule 46 motion, I'll leave that to be so argued
10 at the time. I express no opinion as to whether that
11 works or not.

12 All right. Status of bankrupt proceedings.

13 MR. GOTTFRIED: Yes, your Honor.

14 THE COURT: Quiet, I would think, yes?

15 MR. GOTTFRIED: I have a couple things,
16 Judge, I wanted to report to the Court. I think at the
17 last status conference, we talked a little bit about
18 account receivable collections and wanted to make a more
19 and full complete report to the Court.

20 On the 12-31-2012, the accounts receivable
21 for NECC was approximately \$2,250,000. Obviously,
22 there's an issue with some of those accounts receivable,
23 but to date, the trustee has collected nearly \$800,000
24 against those accounts receivable and continues to work
25 through the amounts, and he's had to issue credits of

1 about 300,000 already but is continuing to work through
2 the accounts receivable issues and has had excellent
3 success to date in collecting nearly \$800,000, so I
4 wanted to put some numbers forth from the last status
5 conference.

6 THE COURT: So there's about a million one
7 still outstanding that he must think are at least quasi
8 collectable?

9 MR. GOTTFRIED: We hope. We're working
02:26PM 10 through that.

11 THE COURT: All right.

12 MR. GOTTFRIED: Two, as the Court is well
13 aware, the bar date has now passed, and I wanted to give
14 you at least a preliminary report that there were
15 approximately 3100 patient claims filed. I thought that
16 would be important to know.

17 A number of clinics and some of the
18 so-called national defendants have also filed claims, so
19 we're in the process of going through those and getting
02:27PM 20 our numbers together, but there's a preliminary report
21 for the Court that the bar date is passed, and that's
22 where we are.

23 THE COURT: Okay. Anything further on
24 bankruptcy? All right. Status of appeals.

25 MR. FENNELL: Your Honor, there's an appeal

1 pending in the First Circuit on I believe it was a
2 motion for abstention, the original motion for
3 abstention that's on appeal, and the Appeals Court just
4 issued a scheduling order on that. The opening briefs
5 are due March 10th.

6 THE COURT: All right. And status of
7 insurer's declaratory judgment actions. I have two of
8 these. I guess I don't want -- I don't need a final
9 binding position at this point, but if it looks like
10 there is a recusal issue there, which would not be
11 obvious to me, I would like it to be flagged sooner
12 rather than later, but what is the status of those
13 actions? Mr. Sobol.

02:28PM

14 MR. SOBOL: Well, the only thing I can
15 indicate, your Honor, is that the PSC is in the process
16 of drafting papers in order to intervene. I think I've
17 seen some recent answers and some appearances by the
18 individuals as well, too, so it probably makes sense for
19 the PSC to make sure that it's trying to get involved in
20 the case soon and for you to schedule a scheduling
21 conference with respect to both of them, I should say.

02:28PM

22 THE COURT: All right. There have been
23 answers filed in both the cases drawn to me?

24 MR. SOBOL: That's my understanding, yes.

25 THE COURT: I'll have Mr. Cicolini take a

1 look at that, and if it looks like there's answers and
2 it's ready to be teed up, we'll set it for a scheduling
3 conference. Again, I don't know whether any of that
4 affects UniFirst, but obviously the time to raise those
5 issues is now.

6 MR. SOBOL: I think --

7 THE COURT: Go ahead.

8 MR. SOBOL: I think that the answer to that
9 might rest with Ameridose and whether or not Ameridose
02:29PM 10 is going to take the position that its liability is in
11 some way affected one way or the other by UniFirst, and
12 you should probably know that sooner rather than later.

13 THE COURT: All right. I'll let that work
14 its way through in the normal course. Anything else
15 that anyone wants to take up?

16 MR. FERN: Judge, you may have seen this
17 week that a number of stipulations of dismissal without
18 prejudice were filed on cases.

19 THE COURT: Yes, I saw that.

02:29PM 20 MR. FERN: Can I explain to the Court there
21 were approximately 18 duplicate filings, Judge. Some of
22 them or most of them were lawsuits filed against NECC
23 before the bankruptcy petition was filed last
24 December of 2012. Subsequently, those same firms on
25 behalf of those same plaintiffs filed lawsuits against

1 either affiliated defendants or the nonaffiliated
2 clinics in their perspective jurisdictions.

3 When they were filed, most of them in
4 Tennessee, they were either removed or brought here by a
5 tag-along action, so we had duplicate plaintiffs with
6 two lawsuits in the MDL. We were cognizant of that.

7 We worked with the various law firms in
8 Tennessee and a couple in Ohio. We offered them various
9 options as to how to basically clean up the docket.

02:30PM

10 They've chosen to file these steps of dismissal without
11 prejudice, therefore, it's basically avoiding these
12 cases so when we get to a mediation process, no
13 plaintiff gets to double-dip in any kind of recovery. I
14 anticipate you'll see more of those stipulations filed
15 within the next week to 10 days.

16 THE COURT: All right. Thank you. Actually
17 I have another housekeeping matter. There's been a
18 motion hanging out there since last July. That's ARL
19 Bio Pharma's motion for a protective order that I think
20 the relief they're seeking either has been superseded by
21 subsequent events or some are caught up in what I expect
22 to happen over the next couple months.

02:31PM

23 Is anyone here -- what I was going to
24 suggest is that I deny it without prejudice under the
25 circumstances. Let me hear from counsel.

1 MS. RAGOSTA: Your Honor, Kristen Ragosta
2 for ARL. To be honest, I do not even remember the basis
3 for the motion at this point. I wasn't prepared to
4 speak on it today.

5 THE COURT: It suggests it's not the most
6 compelling motion possible.

7 [Laughter]

8 THE COURT: It may have been when you filed
9 it. Mr. Ellis.

02:31PM 10 MR. ELLIS: I think it had to do with case
11 management. I think it's moot at this point, Judge.

12 THE COURT: It's 276. I'm going to deny it
13 without prejudice. If there are issues raised in there,
14 they can brought up again, but, again, I want to clear
15 the docket for the new Judge ought to have, if not a
16 clean slate, a slate that's not any dirtier than
17 necessary.

18 MS. RAGOSTA: Thank you, your Honor.

19 THE COURT: Anything else?

02:32PM 20 (No response)

21 THE COURT: All right. Thank you, all. I,
22 again, I've very much appreciated working with all of
23 you. The in-state lawyers I'll see again. I'm sorry we
24 dragged you up here, but it has been a pleasure, and
25 thank you, all.

1 MS. PARKER: Thank you, your Honor.

2 (Whereupon, the hearing was adjourned at
3 2:33 p.m.)

4

5 C E R T I F I C A T E

6

7 UNITED STATES DISTRICT COURT)

8 DISTRICT OF MASSACHUSETTS) ss.

9 CITY OF BOSTON)

10

11 I do hereby certify that the foregoing
12 transcript, Pages 1 through 53 inclusive, was recorded
13 by me stenographically at the time and place aforesaid
14 in MDL NO. 13-02419-FDS, IN RE: NEW ENGLAND COMPOUNDING
15 PHARMACY CASES LITIGATION and thereafter by me reduced
16 to typewriting and is a true and accurate record of the
17 proceedings.

18 Dated this February 11, 2014.

19 s/s Valerie A. O'Hara

20

21 _____
22 VALERIE A. O'HARA

23 OFFICIAL COURT REPORTER

24

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